



*** PATENT OFFICE ***

1. (Three Times Amended) A mini-pallet comprising:

a substantially rectangular deck having a length defined by a first two opposing sides, a width defined by a second two opposing sides, an upper surface, a lower surface, and a perimeter comprising at least one double wall edge;

two downwardly projecting parallel load supporting rails connected to said substantially rectangular deck, said rails proximate to each of said first two opposing sides of said substantially rectangular deck, said rails extending a portion of the width of the deck and defining a clearance space below the rectangular deck; and

a downwardly projecting central support connected to said deck, and located intermediate of both said first two [downwardly projecting rails] opposing sides and said second two opposing sides]; and

a clearance space below the rectangular deck between the second two opposing sides, said clearance space], wherein the clearance space is unobstructed between the rails except for the central support.
23. (Three Times Amended) A first shipping tray comprising:

a deck having a length and a first pair of opposing lateral sides at ends of said length and a second pair of opposing lateral sides, said first pair of opposing lateral sides being substantially parallel;

a plurality of downwardly extending load supporting legs proximate with said first pair of opposing lateral sides and extending a depth below said deck

thereby defining a clearance space between the second pair of opposing lateral sides below said deck;

a central support extending downwardly from about the center of said deck intermediate of both the first pair of opposing lateral sides and the second pair of opposing lateral sides to the depth of the legs wherein said central support is substantially the only obstruction in the clearance space;

said deck above at least a portion of said plurality of legs and said central support; and

said central support having an exterior surface, and a pocket capable of receiving at least a portion of a similarly configured second shipping tray having a central support when said second shipping tray is nested atop the first shipping tray[; and

a clearance space located between the second pair of opposing lateral sides below the deck between the legs, said clearance space being substantially obstructed only by the central support].

24. (Three Times Amended) A first tray comprising:

a deck having a center and a perimeter;

two legs proximate to the perimeter of the deck downwardly extending from a bottom surface of said deck to a depth, said legs located on opposing sides of the center of the deck and defining a clearance space below said deck at the depth of the legs between said legs;

two leg pockets located on a top surface of said deck and compatible to receive

at least a portion of legs of a similarly shaped second tray when said first and second trays are stored in a nested position;

a central support located near the center of said deck intermediate the perimeter of the deck, said central support being substantially the only obstruction in the clearance space, said central support extending from a bottom surface of said deck to the depth of the legs, and having an outer perimeter portion compatible with a portion of a carrier lifting tongue; and

a cylindrical pocket located on a top surface of said deck compatible to receive at least a portion of a central support of the second tray when said first and second trays are in a nested position[; and

clearance space below said deck at the depth of the legs between said legs, said clearance space unobstructed except for the central support and adapted to receive the carrier lifting tongue].

REMARKS

The Office Action of October 4, 2001 proposes a new rejection of claims 1-24 as indefinite in failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention under 35 U.S.C. §112. Specifically in claims 1, 23 and 24, the applicant recites a “clearance space”. The Action asserts that, “the recitation of a *‘clearance space’ is improper because how can space be claimed?*”

Spaces have long been claimed as elements in patents. In order to designate “spaces” or voids, patent practitioners have utilized terms including: bore, cavity, duct, gap, groove, hole, lumen, opening, orifice, passage, recess, slot, and void, among others. The practice of claiming space is now well established before the Patent Office. In re Newton, 163 U.S.P.Q. 34 (CCPA 1969).

A search of patents issued between 1996 and 2001 attached hereto, reveals that 246 patents have specifically recited a “clearance space” in at least one claim. The Applicant concedes that the better practice is to claim holes inferentially rather than positively, and has accordingly amended claims 1, 23 and 24 to recite that the rails or legs beneath the deck define a clearance space. The amendment does not narrow the claims in any fashion, but only adapts the claims to inferentially claim the clearance space. In light of the amendment, Applicant requests that the rejection under 35 U.S.C. §112 be withdrawn.

The Office Action of October 4, 2001, also maintains the rejection of claims 1-24 under 35 U.S.C §103 as being unpatentable over Haskins, U.S. Patent No. 3,995,794 in view of John et al., U.S. Patent No. 5,860,369 and Shuert, U.S. Patent No. 4,550,830. Claims 1,

23, and 24 were amended on February 6, 2001, to require a clearance space located below the deck between the legs except for the central support located intermediate each pair of opposing sides of the deck. The Office Action states that it would be a mere reversal of parts to provide a clearance space for a positive image fork such as Applicant's member 10 verses a bifurcated clearance for receiving a spaced apart fork as taught by Shuert." Although Applicant included a discussion regarding the inappropriateness of the reversal of parts doctrine to the present case in the response of July 19, 2001, the Office Action makes no rebuttal or acknowledgment of the Applicant's position.

The application of the reversal of parts doctrine is discussed in MPEP §2144.04. The reversal of parts doctrine is not properly applicable to the present claims based upon Shuert. The Shuert reference shows a plastic molded pallet configuration in Figure 1 which has nine legs with two skids 50 of a fork lift about to pass through indentations 42,44 between some of the legs on face 40. A simple illustration is provided below where 1-9 represent the legs between skid indentations 42-48 and the lines represent the fork lift skids 50:

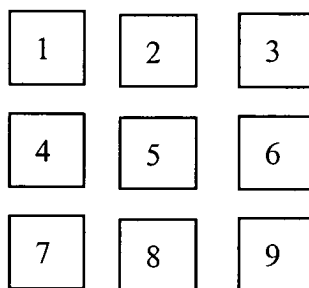
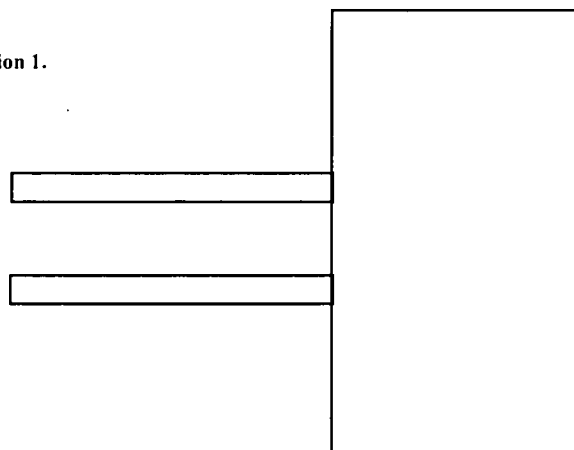


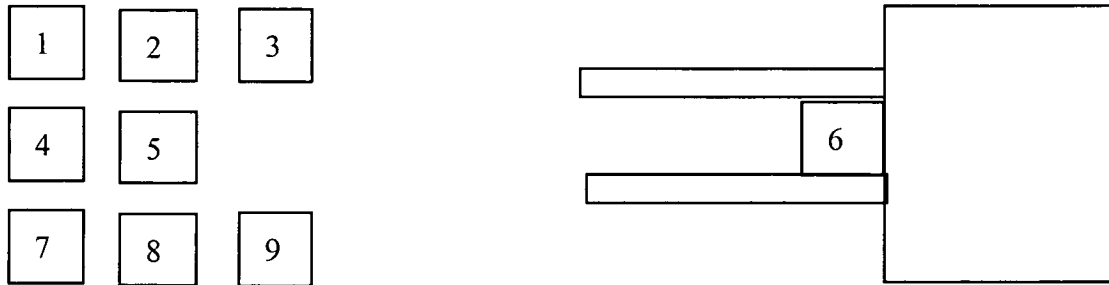
Illustration 1.



The Office Action states that it would be a "mere reversal of parts" to provide a

clearance space for a positive image type fork such as Applicant's member 10. Such a reversal would lead to leg 6 becoming part of the forklift skids to approximate the shape of Applicant's member 10 as shown in Illustration 2 below:

Illustration 2.



There is no teaching or suggestion for this modification. Furthermore, the Board of Patent Appeals and Interferences decided a case with ALMOST IDENTICAL facts in 1985 and found the Examiner inappropriately applied the “reversal of parts” doctrine. See Ex parte Giles, 228 USPQ 866 (Bd. Pat. App. & Int. 1985). In that case, a one part plate in the prior art reference had to be transformed by the Examiner in the rejection into a two part plate and one of the two parts then reversed with another element to arrive at the claimed invention. The Board held that this was an improper application of the reversal of parts doctrine and reversed the examiner's rejection of the claim.

In a similar manner, the present rejection must attempt to transform a one piece molded pallet of Shuert into a deck supported by nine detachable legs. For an operable reversal of parts, it would then be necessary to remove two of the legs (numbered 4 and 6, to form the required clearance space), yet only one of the removed legs may be connected to the fork lift skids to arrive at a functional structure. As with the Giles case, a unitary component (here the molded Shuert pallet) is being divided into separate parts (here legs and a deck) and

then only selected parts are being “reversed”. There is no teaching of removeable legs for pallets in this art, and only Applicant’s disclosure and not the prior art provides a motive for achieving the combination claimed in the claims.

Another problem with the rejection under § 103 is there is no teaching, suggestion or motivation for the proposed modification. The ability to utilize a forklift with a pallet such as Shuert does not mean that the tongue of a hand truck could be utilized as taught by the Applicant’s disclosure. In fact, if a hand truck tongue were substituted for the fork lift tongue in Illustration 1, it would hit leg number 6 instead of proceeding into a clearance space as claimed.

Although the Examiner attempts to create Illustration 2 with reversal of parts doctrine, Illustration 2 itself fails to meet the limitations of the claims since leg number 4 is in the required clearance space.

In order for there to be a complete “reversal of parts” providing the claimed clearance space, leg number 4 would also need to be removed and connected to the fork lift skids 50. Only by removing both legs 4 and 6 can the required clearance space be created under the Shuert pallet. This complete reversal of parts is shown in Illustration 3.

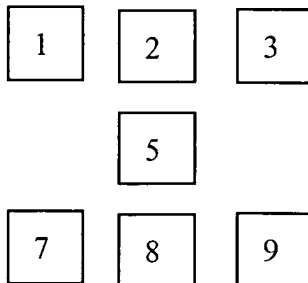
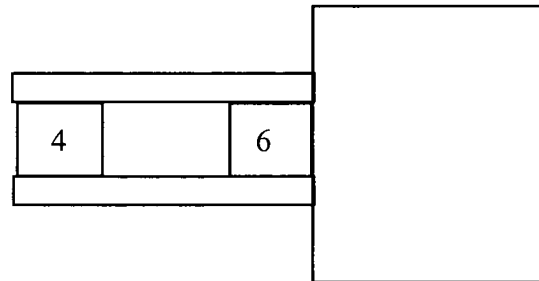


Illustration 3.



The configuration of Illustration 3 is not operable since leg number 4 prevents the fork

lift skids from progressing past central support leg number 5. Therefore, if a reversal of parts were somehow suggested, it would create either an unworkable configuration as shown in Illustration 3, or if only partially implemented as shown in Illustration 2, it would not disclose the claimed invention since leg number 4 is in the clearance space which is claimed as substantially unobstructed except for the central support.

Apart from the inoperability of a reversal of parts as shown in Illustration 3, with the removal of legs 4 and 6, the Shuert pallet would tend to deflect downwardly under load at these points. Thus there would be a sag between legs 3 and 9 and between legs 1 and 7. Unlike the double wall construction of the perimeter of the pallet of the claimed invention, see reference numeral 128 in Figures 5 and 6, the Shuert pallet relies upon the three legs along each perimeter to minimize the sagging. The sagging perimeter between legs 3 and 9 would likely render futile any attempt to insert the legs 4 or 6 (as connected to the fork lift tines in Illustrations 2 and 3) underneath the Shuert pallet, since the legs 4,6 would strike the sagging perimeter of the deck of the pallet. Due to the mere reversal of parts, the legs 4, 6 would be the same height as the other legs and any deflection at all would make the lateral insertion of a leg below the deck impossible. Therefore, the lack of a rigid, reinforced perimeter structure in the Shuert pallet teaches away from any reversal of parts.

The Applicant must also note the complete absence of any suggestion in the art to combine the Haskins, Shuert, and John references apart from their general subject matter of pallets. The selection of separate elements from several references without an explicit suggestion to combine the references has the appearance of constructing the invention with hindsight.

The Applicant submits that the “reversal of parts” doctrine is not applicable in the present case, for reasons similar to its inapplicability in Ex parte Giles, 228 USPQ 866 (Bd. Pat. App. & Int. 1985). Furthermore, even if a reversal were suggested, as shown in Illustration 3 above, connection of both of the removed legs to the skids 50 results in a non-working arrangement. Accordingly, it is submitted that there is no teaching in the cited references for a “mere reversal of parts” that could result in the claimed invention, nor any teaching to combine the Haskins, Shuert and John references.

SUMMARY

As amended, claims 1-24 require an inferentially claimed clearance space below the deck between the legs (rails) with the only substantial exception being the central support which is located below about the center of the deck. None of the cited references contain this structure or suggest that it would be obvious to one skilled in the art, either directly or by a reversal of parts.

Accordingly, claims 1-24 are allowable, and such favorable action is respectfully requested.

Respectfully submitted,

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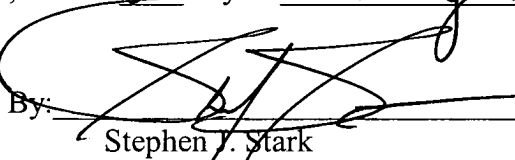
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By: 
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